TIONG PIK HIONG v. WONG SIEW GIEU

[O.C.J. (McGilligan J.) November 13, 1963]

[Sibu — High Court Civil Suit No. 126 of 1963]

Tort — Battery — Injuries to face, neck and arm — Measure of damages.

Practice and Procedure — Suit unnecessarily brought in High Court — Costs — O. 65 r. 12B.

The defendant, driven by violent jealousy resulting from the plaintiff's association with her husband, attacked the plaintiff, and scratched her face, neck and arm, thereby causing her injury. The plaintiff claimed damages for battery.

Held: in the circumstances of this case after taking into consideration the pain and suffering undergone by the plaintiff, temporary loss followed by a temporary diminishment of her good looks and loss of amenities the sum of $450 should be awarded as general damages.

Certificate under O. 65 r. 12B refused.

Cases referred to:—

(1) *Austin* v. *The British Transport Commission* (1956) 1 Kemp & Kemp 2nd Edn. 256; [1956] 2 Ll.L.R. 353.

(2) *Brown* v. *Moorehouse Bros. Ltd.* (1957) 1 Kemp & Kemp 2nd Edn. 694.

(3) *Jones* v. *Shaw Savill and Albion Co. Ltd.* (1951) 1 Kemp & Kemp 2nd Edn. 693; [1951] 2 Ll.L.R. 33.

(4) *Rigby* v. *St. Helens District Industrial Co-operative Society Ltd.* (1959) 1 Kemp & Kemp 2nd Edn. 693.

CLAIM FOR DAMAGES.

C. T. Wong for the plaintiff.

Defendant in person.

Cur. Adv. Vult.

McGilligan J.: The plaintiff is an infant, aged 17, suing through her mother and next friend. Her claim is for special and general damages for battery. She alleges that on the 29th of August 1963 the defendant (a woman), attacked her on the 1st floor of No. 50, Central Road, Sibu, at the foot of the staircase coming down from the second floor, on which is the Sarawak Ladies Dressmaking Institute (where she then was, and now is, learning dressmaking). She says that the defendant scratched her on her face, neck and arm, causing her pain and suffering, and leaving her with permanent injuries and visible marks on her face. It is part of her case that the marks cause her constant embarrassment and that her marriage prospects have been lessened. She claims special damages of $46, and must therefore be claiming in general damages such an amount as to bring the total claim to over $3,000; otherwise the case would have been taken in the Stipendiary Magistrate's, or some lower court.

The statement of defence is a short one, and may be conveniently set out in this judgment. It reads as follows:—

"1. The defendant contends that there were only superficial abrasions or scratches sustained by the plaintiff. Such superficial abrasions or scratches would never become permanent injuries and would be disappeared within a short time. The general damages therefore do not arise.

2. The defendant, however, admits having assaulted the plaintiff at the alleged place and on the date mentioned. The defendant contends that at the time of such assault the defendant was mentally insane and incapable of controlling herself. She was completely unaware of what she has done. Such state of mentality was resulted from hatred and jealousy over the intimate affairs between the plaintiff and the husband of the defendant. The defendant has for some considerable time been unable to sleep well during night time. She has gradually developed into mental slackness.".

In her evidence the defendant denied that she scratched the plaintiff, but admitted that she "beat her up". She did not go as far as to say that she was in such a state of rage and jealousy as to be actually insane; but she did say that the plaintiff and her husband had been associating with each other, having an affair, and that because of the plaintiff her husband had been treating her badly. She implied that the plaintiff was trying to take her husband away from her. Because of all this, she said (in so many words or in effect) that she was very jealous and annoyed and that "this affair hurt me mentally very much".

In evidence the defendant was vague and rather contradictory as to where she "beat" the plaintiff. First she told the court it was on the street; then in cross-examination she said "After I met her (the plaintiff) she went into a shop. Beat her in the shop on the ground floor. I am not sure of floor". It was put to her that she was lying in wait for the plaintiff in order to do her harm, in fact to ruin her beauty or spoil her face. This the defendant strongly denied. She did admit, however, under cross-examination, scratching the plaintiff, but said (I quote) "I scratched her face without intention, just merely in the course of struggling".

The court accepts that the defendant attacked and injured the plaintiff on the first floor of No. 50 Central Road Sibu as the plaintiff was going home from her dressmaking class. On the balance of probabilities it also accepts that the defendant was waiting there for the plaintiff with the intention of physically attacking her. There is no doubt that defendant scratched the plaintiff quite badly on the face, and also scratched her on the neck and arm. I am satisfied that the defendant intended to scratch, and inflict injury, on the plaintiff, but I do not accept it as proved (even as a matter of probability) that she intended to spoil permanently the plaintiff's face.

There is no doubt also that the defendant was driven to her attack by violent jealousy. How far her jealousy was justified it is not

possible to say on the evidence before the court, but I do not believe plaintiff that she knows nothing at all of the defendant's husband, and accept that they did associate together to some, though it may only have been to a very small, extent. The fact of her jealousy does not at all excuse the defendant's actions, but it is relevant on the question whether there is any ground for mitigating of damages, and also on the question whether exemplary damages should be given.

There remains only the issue of amount of damages. This in fact was the basic issue throughout, in view of the defendant's admissions, but there were several points of difference between the parties on the facts, which had first to be resolved before the amount of damages due to the plaintiff could be decided. There is no doubt that she is entitled to some damages.

The plaintiff claims $46 as special damages. Hospital charges are clearly allowable, and a receipt for $10 was produced. I consider the plaintiff should also be allowed her taxi fares on the 29th August to the police station and on to the hospital and home. I do not see the necessity for taxis on the other occasions (how many is not known) she went from her home in Blacksmith Road to the hospital. For taxi fares I would allow her $4. As to the chicken essence given her, I accept this was reasonable, being medicinal tonic and special convalescent food. A receipt was produced for $26.50 and I allow her that amount. The fact that her mother has already paid these several expenses does not alter the position between the parties in respect of them. The plaintiff was liable to pay them herself, and would still be if her mother had not already done so, and she is entitled to get an amount equivalent to that outlaid (within the bounds the court has allowed), with which she can repay her mother. I award the plaintiff $40.50 as special damages.

I now come to assess the general damages. There is no doubt the plaintiff was quite nastily scratched on the face (the photograph shows that) and she must have suffered some pain from them and the swelling which they caused. The scratches on her arms and neck must also have caused her some pain. I consider that she also must have had some mental suffering, through embarrassment at her appearance, and through fear that her good looks were ruined. She is entitled to damages for pain and suffering.

The plaintiff still has visible on her left cheek four small reddish scars or marks, which are undoubtedly the result of the defendant's scratching. I cannot regard these scars as permanent injuries. They are obviously much less noticeable now than they were 2½ months ago. The doctor who gave evidence for the plaintiff said that the scars would go away in two or three years, that they may remain for two or three years. I am convinced he did not regard them of much account, and he could not distinguish them in character from other scars on her face, which were due to other minor causes. These marks are not really very noticeable now, and I am sure they will fade to complete inconsequence in a not very long time. Even with them the plaintiff is an attractive girl, and I should say that her good looks are fractionally, if at all, lessened by the scars (even as they are now). In a few weeks or a few months there will be no observable difference between her as she is now, and as she was before the attack. Even now, a judicious application of face powder would render the marks invisible. It has not been suggested and it does not appear to the court that she has been psychologically affected in any way; she has not been made shy or afraid of people (she went back to the Dressmaking Institute a month after she received the injuries). Her marriage prospects have been in no way diminished. She is entitled, however, to some small damages for a temporary loss, followed by a temporary diminishment, of her good looks, as thereby she suffered a temporary loss of part of the amenities of her life, and will go on suffering in a very small and decreasing way such a loss of amenities for a short period, until the not distant day when these scars become unnoticeable.

The plaintiff is therefore entitled to damages for pain and suffering and for a temporary loss of part of the amenities of life. As always it is not an easy matter exactly to assess damages, but I may say at once that I consider the plaintiff's a very inflated one, which should have been brought in a magistrate's court. That is not to criticise her advocates in any way. They had to follow the instructions given.

Obviously only a very small part of the damages should be for loss of amenities. The main part must be for pain and suffering. The doctor said her pain would have been minimal, but a doctor's standard of comparison in such a matter must be different from the layman's. The first day the plaintiff must have suffered very definite pain, though I do not think even then it could be said to have been severe pain. There is no reason to believe that healing progressed other than normally and the pain must have diminished day by day, and have completely gone by, at the most, 10 days after the injuries were inflicted. She did not have to stay in hospital or go to bed.

Learned counsel for the defendant could quote, to assist the court only the case of *Austin* v. *The British Transport Commission*,[1] which is mentioned on page 256 of Volume 1 of 2nd Edition of *Kemp and Kemp* on the "Quantum of Damages". The plaintiff in that case, a woman, was awarded £660 for general damages; but

even on the brief details given in *Kemp and Kemp* it was clearly a much more serious case; the injuries were much greater and their results worse, and the pain and suffering must have been of a much higher degree.

More to the point, in my view, are the cases mentioned in Chapter 7 of the same volume, which chapter is concerned only with pain, suffering and shock. In *Brown* v. *Moorehouse Bros. Ltd.*[2] (p. 694) the plaintiff received £75 general damages. In *Jones* v. *Shaw Savill and Albion Co., Ltd.*[3] (p. 693) £80. In *Rigby* v. *St. Helens District Industrial Co-operative Society, Ltd.*[4] (p. 693) £120. In all these cases it seem clear that the pain and suffering must have been of a much higher degree than the plaintiff suffered in the instant case. In the case of *Brown* v. *Moorehouse Bros. Ltd.*, a girl aged 11 was hit by a lorry and dragged along the road for some yards. She received abrasions, suffered shock and was in bed for 4 weeks. The abrasions became septic, requiring further treatment, and she was in a nervous condition for six months afterwards. There was also a scar 3½ by 2 inches on her upper thigh. Yet she received only £75, less than $650.

I do not think this is a case for heavy exemplary or punitive damages, because the defendant was certainly under a great mental strain at the time, to which condition the plaintiff did (however little or unintentionally) by her conduct contribute. However, this was a vicious attack, and the defendant should not have so resorted to violence. I am therefore going to award somewhat more than I otherwise would have done. I award the plaintiff $450 general damages.

The total of damages awarded is therefore $490.50.

Coming to costs, Order 65 r. 12B of the Rules of the Supreme Court reads as follows:—

"12B. — If any suit is brought in the High Court, which would have been within the jurisdiction of a Subordinate Court, or in which the plaintiff recovers a sum for which judgment could have been recovered in the Subordinate Court, the plaintiff shall not be entitled to any more costs than he would have been entitled to if the proceedings had been brought in the Subordinate Court, unless in any such suit a Judge certifies that there was sufficient reason for bringing the suit in the High Court".

Judgment could have been given for $490.50 in a 2nd class Magistrate's Court, and I am not going to give any such certificate as is referred to in the rule. Even if there were no such rule, I should have allowed only light costs, and I propose to fix this amount under the general discretion of the court as to costs. I award the plaintiff $250 in costs.

Judgment for the plaintiff.

KONG YII TAI v. PUBLIC PROSECUTOR

[A.Cr.J. (McGilligan J.) December 17, 1963]

[Sibu — High Court Criminal Appeal No. 15 of 1963]

Firearms and Ammunition — Surrender order — Order made for security reason — Failure to surrender — Time of semi-emergency — Sentence — Preservation of Public Security Regulations, 1962, regs. 27 and 39.

Criminal Procedure — Sentence — When to be reduced or set aside.

The appellant was convicted on charges of possession of a shotgun and ammunition contrary to the Preservation of Public Security Regulations, 1962, and was sentenced to 6 months imprisonment. On appeal against sentence,

Held: in this case as the sentence was appropriate, fitting to circumstances of the crime, and not manifestly excessive, it should not be set aside.

CRIMINAL APPEAL.

Appellant in person.

J. W. Williams (Deputy Public Prosecutor) for the respondent.

McGilligan J.: The appellant was convicted on September 10, 1963 on the two following charges —

"That you, on or about the 7th day of September, 1963, at 2140 hours, at Sungei Durin, Sibu, being a person, other than a native, had in your possession one firearm, to wit, Iver Johnson single barrel breach loading shotgun, number G-4918, contrary to the provisions of the Surrender of Firearms and Ammunition Order, 1963, made under the provisions of regulation 27 of the Preservation of Public Security Regulations, 1962, and you thereby committed an offence punishable under regulation 39 of the said regulations.

That you, on or about the 7th day of September, 1963, at about 2140 hours, at Sungei Durin, Sibu, being a person other than a native, had in your possession seven shotgun cartridges, contrary to the provisions of the Surrender of Firearms and Ammunition Order, 1963, made under the provisions of regulation 27 of the Preservation of Public Security Regulations, 1962, and you thereby committed an offence punishable under regulation 39 of the said regulations."

He was sentenced to 6 months on each charge, the sentences to run concurrently.

The appellant has appealed on the following grounds:—

"2. Your petitioner is dissatisfied with the said judgment on the grounds following:—

(a) That the magistrate of the court below erred in coming to the conclusion that your petitioner knew perfectly well of the notice to surrender firearms and ammunitions. From the evidence given it is clear that —

(i) when the notice to call for surrender of arms and ammunitions was made, your petitioner was at Kanowit;

(ii) it was your petitioner who admitted the possession of the firearms and ammunitions; and

(iii) your petitioner was of opinion that the firearms licence was issued at Kanowit and it was not necessary to surrender his shotgun.

Evidently the notice was not clearly understood by your petitioner who is an ordinary person. As such your petitioner had no intention at all to commit the offence or had the knowledge that he had committed the offence.